REMARKS

This Request for Reconsideration is filed in response to the non-final Office Action of November 14, 2008 in which claim 14 was withdrawn from consideration and claims 1-13 and 15-36 rejected. Even though the Office Action summary sheet (PTOL-326) indicates that this action is final, the Examiner confirmed in a telephone conversation with the undersigned on February 5, 2009 that the action is non-final and shows up as same on the U.S. Patent and Trademark Office's PALM system. This was confirmed by the undersigned on the U.S. Patent and Trademark Office PAIR system and therefore this response is being treated as a response to a non-final Office Action.

Claims 1, 4-6 and 9-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Harumoto et al* (U.S. 2002/0004840) in view of *Tomita* (U.S. 2002/0003799). It is believed that the Examiner is only rejecting claims 9-13 and 15-18 on this ground since claim 14 was previously cancelled and the Examiner does not discuss claim 14 in the rejection.

The new reference *Tomita* (US 2002/0003799) discloses a data transmission device and a data transmission method which are adapted to add an RTP time stamp accurately synchronized with the PCR when sequentially transmitting data stored in a recording medium in advance with the MPEG2-TS format or data sequentially formatted to the MPEG2-TS format by means of hardware according to the RTP. With a data transmission device and a data transmission method according to the invention, a TS packet containing header information and real time data, the header information including at least synchronizing time reference information (PCR) necessary for producing a synchronizing signal to be used by the receiving side, is received as input by data reading section 11, the PCR is extracted from the input TS packet by PCR reading section 12, the extracted PCR is converted into a time stamp by RTP time stamp computing section 13, an RTP packet containing header information including the RTP time stamp and TS packets is prepared by RTP packet preparing section 14 and the prepared RTP packet is transmitted by data transmitter 15. (Abstract)

The Examiner refers to paragraph [0058] which refers to Fig. 12 and alleges that *Tomita* discloses *wherein a parameter is defined indicative of the maximum amount number of data transmission units that precede any data transmission unit in a packet stream in transmission order and follow the data transmission unit in the decoding order.*

The cited paragraph reads

> *[0058] Referring to FIG. 12, if the PCR reading section of the data transmission device 1 determines that a TS packet is received without any PCR added thereto, the data transmission device 1 sequentially adds TS packets to the data section of the RTP packet being prepared by the RTP packet preparing section 14. When the number of TS packets contained in the data section of the RTP packet input by way of the PCR reading section 12 gets to the predetermined maximum TS packet number, the RTP packet preparing section 14 supplies the RTP packet to the data transmitter 15. Then, the data transmission device 1 completes the preparation of the IP packet containing the maximum number of TS packets in the data section of the RTP packet and then externally transmits it.* (Emphasis added)

This paragraph merely discloses that TS packets are added to RTP packet in a sequential order until the maximum number of packets within one RTP packet is reached. In other words, one RTP packet can carry only a limited number of TS packets wherein the transmitting device has to ensure that only the maximum number of TS packets (or less than the maximum number) will be added to one RTP packet. This has nothing to do with the definition of the claimed parameter which indicates how many transmission units, which are later in the decoding order than the selected data transmission unit, can precede the selected data transmission unit in transmission order.

In the following the applicant will try to clarify this issue. Let us assume that there is a packet stream which contains data transmission units which are transmitted so that at least some of the data transmission units are transmitted in an order different from their decoding order. To simplify, let's mark the data transmission units of the packet stream as follows:

... I00, N58, N59, R03, N01, N02, R06, N04, N05, ...

It is assumed that the data transmission units are transmitted in the above order and that the decoding order of the data transmission units is

N58, N59, I00, R03, N01, N02, R06, N04, N05.

In this example the data transmission unit I00 is transmitted before the data transmission units N58 and N59 but decoded after them. See pages 22 and 23 of the application text to see more details on this issue.

The term *any data transmission unit* (see e.g. line 7 of claim 1) means any one of the data transmission units of the packet stream (e.g. N58, N59, I00, R03, N01, N02, R06, N04, N05). If we selected any one of these data transmission units we can use the parameter to see how many data transmission units, which are later in the decoding order than the selected data transmission unit, can precede the selected data transmission unit in transmission order. In the above example the data transmission unit I00 precedes the data transmission unit N58 in the transmission order but follows it in decoding order. Similarly, the data transmission unit I00 precedes the data transmission unit N59 in the transmission order but follows it in decoding order. The other data transmission units are transmitted in their decoding order. Hence, in this example the maximum number i.e. the value of the parameter is one.

As another example let's assume that the transmission order is as follows:

... I00, N58, R03, N59, N01, N02, R06, N04, N05, ...

It is also assumed that the decoding order of the data transmission units is the same

N58, N59, I00, R03, N01, N02, R06, N04, N05.

In this example the data transmission units I00 and R03 precede the data transmission unit N59 in the transmission order but follow it in decoding order. Hence, there are two data transmission units which precede the data transmission unit N59 in transmission order but follow it in decoding order.

It is clear that the maximum number of TS packets in a RTP packet has nothing to do with the claimed parameter.

Further, the applicant respectfully submits that the Examiner's arguments over *Harumoto et al* are not quite correct. The Examiner alleges that *Harumoto et al* teaches *the data transmission units ordered in a transmission order which is at least partly different from a decoding order of the media data in the data transmission units* (paragraph [0117] lines 7-11 and [0132] line 5).

The cited passages read

> *On the server 101 side, data such as video and audio is stored. This data has been encoded and compressed by MPEG. The server 101 responds to a request from the terminal 102, and generates a stream by assembling the stored data into packets.*

(in the example of FIG. 3, the reception buffer 505 and the decoder buffer 508)

It is only disclosed that a data stream is generated by assembling stored data into packets. Applicant has provided strong arguments in the previous responses showing that *Harumoto et al* does not teach *the data transmission units ordered in a transmission order which is at least partly different from a decoding order of the media data in the data transmission units*. See especially pages 15-17 of the remarks filed with the amendment filed October 15, 2007 as well as the remarks filed April 28, 2008 along with the Pre-Appeal Brief Request for Review. In short, the fact that *Harumoto et al* teaches receiving buffers, decoding buffers and the S_target parameter does not lead to an assumption that the transmission order of packets could differ from the decoding order of the packets. As the paragraph [0132] of *Harumoto et al* explicitly states, the parameter "S_target" is a target value for the data amount to be stored in the buffer by the terminal, and determined based on the entire capacity ("S_max") of the buffer included in the terminal and the transmission capacity of the network.

Withdrawal of the obviousness rejection of claims 1, 4-6, 9-13 and 15-18 is requested. The other obviousness rejection only deals with dependent claims 2-3, 7-8 and 19 that are patentable for at least the same reasons.

The rejections and objections of the Office Action of November 14, 2008, having been obviated by amendment or shown to be inapplicable, withdrawal thereof is requested and passage of claims 1-13 and 15-36 is earnestly solicited.

Respectfully submitted,

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